

Paul F. McKEE, *et al.*
Serial No. 10/552,474
June 30, 2010

AMENDMENTS TO THE DRAWINGS:

Applicants submit concurrently herewith six (6) sheets of annotated drawings illustrating Figs. 1-4, 5I, 5II, 5III and 6 showing proposed changes thereto in red ink, accompanied by six (6) sheets of formal replacement drawings incorporating the amendments.

Attachments: 6 sheets of annotated drawings
6 sheets of formal replacement drawings

REMARKS/ARGUMENTS

Reconsideration of this application is respectfully requested.

The rejection of claims 20-22 under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement is respectfully traversed.

The Examiner incorrectly alleges that the originally filed application makes no mention of a computer-readable storage medium containing a computer program that performs recited functions. The Examiner is respectfully referred, for example, to the computer devices 22 and the software components 28 contained therewithin as detailed in Figs. 1 and 2, for example. It will be noted in Fig. 2 that a computer device 22 comprises, *inter alia*, a memory 31 associated with a processor 27. Furthermore, the software component 28 is detailed as including, *inter alia*, software modules including monitoring stage 34 and initialization controller 32. Functionality of this “software” as it is being executed by the processor is detailed in flow charts, for example, as seen in Figs. 3-4. A certain auction embodiment is also depicted at Figs. 5I-III.

The original specification includes explicit teachings that the “components” may be hardware components or, alternatively, software components running on at least one (hardware) computer device. As those having skill in the relevant art would surely appreciate, the applicants were there clearly describing full possession of an invention that includes, *inter alia*, a computer-readable storage medium containing a computer

program that performs functions to be described thereafter. See, for example, the first paragraph on page 2 of the original specification. The above amendment explicitly adds a parenthetical expression that would surely be understood by those skilled in the relevant art, namely, that the software components refer to a computer program contained in a computer-readable storage medium – e.g., the memory 31 of the computer device 22 as explicitly depicted in Fig. 2.

In any event, claim 20 has been amended above so as to simply avoid explicit mention of a “readable storage medium” and instead to use terminology taken directly from the original specification. Namely, claim 20 is now directed to a computer device containing a computer program that is configured, when executed by a computer device processor, to effect certain functions as stated. Dependent claims 21 and 22 have been similarly amended.

If there is any continuing concern that the invention of claims 20-22 was not described in the original “written description” so as to clearly convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention, then it is respectfully requested that the undersigned be telephoned for discussion and resolution.

The rejection of claims 1-24 under 35 U.S.C. §102 as allegedly anticipated by Harjula '223 is respectfully traversed.

In support of this entire ground of rejection alleging anticipation of every one of claims 1-24, the Examiner simply quotes claim 1 alone with some inserted parenthetical comment and a single reference to the Harjula teaching at 9:54-61.

The Examiner's inserted parenthetical comments indicate that mere execution of a software process has been interpreted as "initialization". However, this is clearly incorrect and completely irrelevant to the applicants' controller and prioritized initialization of software components wherein the initialization of a component causes the device on which it runs to be rebooted or otherwise initialized so as to avoid and/or cure malfunction(s) that are likely to cause deterioration in the operational capacity of a computer device over time. As explained at page 7, lines 17-22, initialization of the type envisioned by the applicants' exemplary embodiment may involve a reboot (or equivalently, a restart) of the computer device or alternatively, may require the application to be "killed" and restarted (i.e., without rebooting the entire computer device). A further alternative is described where initialization may require the amount of memory deemed to be in use by a particular application to be reset (e.g., to 0).

In any event, the "initialization" described and claimed by the applicants is not merely routine execution of a process of the type taught by Harjula.

Harjula teaches a system for using first and second operating systems, each controlling its set of resources, at least one of the systems being a real-time operating system. It is directed to the scheduling of processors controlled by these two different operating systems in a manner that is most efficient.

Harjula does not even address the problem caused by component malfunctions that may require re-initialization of one or more components from time to time.

Indeed, the only text cited by the Examiner to support this entire ground of rejection only deals with determining the order of running various processors wherein a scheduler uses a priority field value to determine the order of process execution. The entirety of the text relied upon by the Examiner is quoted below for convenience:

“For determining the order of running of the processes, the scheduler uses the value of the priority field, wherein, for example, the higher the numerical value contained in this field, the higher the priority of the process. Thus, by comparing the values of the priority fields of the processes in the wait state, the scheduler selects the process with the highest priority value as the process to be executed next.” [9:54-61]

Not only does this Harjula teaching fail to anticipate claim 1, it also fails to anticipate claims 2-24. For example, claim 2 requires each component to use its own status data in addition to received status data when making a comparison used for prioritizing initialization components. Claim 5 requires each component to execute an initialization routine when the initialization parameter for that component reaches a respective

threshold value – and also requires the initialization routine to include a step of transmitting a request for an initialization parameter to other components. Claim 6 depends from claim 5 and requires, *inter alia*, the making of a self-initialization decision.

Claim 7 requires each component to include a timer module for registering elapsed time since a previous initialization of that component, etc. Claim 8 requires each component to produce an initialization parameter that is at least in part dependent upon whether that component is performing one of a number of predetermined tasks.

Claim 10 requires each of the software components to include a respective operating system module.

Claim 11 requires each component to initiate a reboot routine upon receipt of an initialization instruction – the reboot routine being configured to reboot the computer device on which the software component is running. Claim 12 further requires the reboot routine to determine if a predetermined task or one of a number of predetermined tasks is being performed and to only permit rebooting if the computer device is not performing such task(s).

Claim 13 requires the components in use to run on a common computer device under the control of a common operating system (i.e., directly contrary to the Harjula arrangement).

Claim 14 requires each component, upon receipt of an initialization instruction, to be killed and subsequently restarted.

Claim 15 requires task allocation to be dependent upon the tasks being performed by at least some of the other components.

Independent claims 16, 17, 20, 23 and 24 also require initialization decisions – not merely scheduling of process execution as allocated between two different operating systems, etc. Dependent claims 18, 19 and 21-22 also add additional features.

In short, Harjula does not teach each and every feature of each rejected claim. Accordingly, as a matter of law, it is impossible to establish even a *prima facie* case of anticipation for all claims 1-24 based on the teachings of Harjula.

In any event, the independent claims have been amended above so as to more particularly clarify the fact that the claimed “initialization” is something quite different from the mere scheduling of execution processes (e.g., by allocating processes between operating systems, etc.).

As explained in applicants’ specification (e.g., see 1:20-27), the applicants’ “initialization” procedures often disrupt the normal operation (i.e., execution) of components. That is, the applicants’ initialization procedures stop components from mere continued on-going execution of its associated process. The applicants’ specification

teaches that components generally perform tasks when not currently being initialized (e.g., see the specification at 1:6-19 and original claim 12).

As will be noted, the applicants' independent claims have now been amended so as to require each component to be operable to perform at least one task when not being initialized. Clearly, the mere scheduling of tasks as in Harjula cannot conceivably anticipate (or suggest) applicants' claimed invention.


The Examiner's mention of the Shiragaki reference with respect to claims 16, 17, 20, 23 and 24 is curious since there is no outstanding ground of rejection based in any way on Shiragaki. Indeed, fundamental deficiencies of Shiragaki have already been pointed out by applicants with reference to an earlier ground of rejection. Presumably, this final sentence in the discussion just prior to the "conclusion" at page 3 of the office action is merely a word processing error causing some language to be carried forward from an earlier office action. In any event, since there is no outstanding ground of rejection based upon Shiragaki, it is not necessary at this time to provide any additional explanation of that reference's fundamental deficiencies.

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Accordingly, this entire application is now believed to be in condition for allowance, and a formal notice to that effect is earnestly solicited.

Respectfully submitted,

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